

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|---------------------------|---|------------------------------------|---------------------------------|
| Investigator: Matthew Chaves | Team: Squad #7 | CCRB Case #: 201904055 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Saturday, 03/09/2019 7:59 PM | Location of Incident: East 214th Street and Paulding Avenue | Precinct: 47 | 18 Mo. SOL 9/9/2020 | EO SOL 4/26/2021 | |
| Date/Time CV Reported Fri, 05/10/2019 4:31 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Fri, 05/10/2019 4:31 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. POM Ryan Jones | 05095 | 956781 | 047 PCT |
| 2. POM Nicholas Santomero | 16608 | 956238 | 047 PCT |
| 3. SGT David Welton | 04691 | 947604 | SRG 2 |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|------------------------|-----------|--------|----------|
| 1. POM Emmanuel Deleon | 30828 | 952654 | 047 PCT |
| 2. POM Kelvin Guillen | 01542 | 952815 | 047 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|--|-----------------------------|
| A.POM Ryan Jones | Abuse: Police Officer Ryan Jones stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| B.POM Nicholas Santomero | Abuse: Police Officer Nicholas Santomero stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| C.POM Ryan Jones | Abuse: Police Officer Ryan Jones questioned § 87(2)(b) | |
| D.POM Ryan Jones | Abuse: Police Officer Ryan Jones frisked § 87(2)(b) | |
| E.POM Ryan Jones | Abuse: Police Officer Ryan Jones interfered with § 87(2)(b)'s use of a recording device. | |
| F.SGT David Welton | Abuse: Sergeant David Welton threatened to arrest § 87(2)(b) | |
| G.POM Nicholas Santomero | Abuse: Police Officer Nicholas Santomero threatened to arrest § 87(2)(b) | |
| H.POM Ryan Jones | Abuse: Police Officer Ryan Jones threatened to arrest § 87(2)(b) | |
| I.SGT David Welton | Abuse: Sergeant David Welton threatened § 87(2)(b) with the use of force. | |
| J.POM Nicholas Santomero | Abuse: Police Officer Nicholas Santomero searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| K.SGT David Welton | Abuse: Sergeant David Welton seized § 87(2)(b)'s property. | |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------|---|-----------------------------|
| L.POM Ryan Jones | Abuse: Police Officer Ryan Jones searched the vehicle in which in which § 87(2)(b) and § 87(2)(b) were occupants. | |

Case Summary

On May 10, 2019, the CCRB called § 87(2)(b) to discuss CCRB complaint number § 87(2)(b). During this call, § 87(2)(b) filed the following complaint.

At approximately 8:00 p.m. on March 09, 2019, § 87(2)(b) and § 87(2)(b) were driving in the vicinity of East 214th Street and Paulding Avenue in the Bronx when Police Officer Ryan Jones and Police Officer Nicholas Santomero of the 47th Precinct pulled their car over for speeding (**Allegation A: Abuse of Authority: Vehicle stop:** § 87(2)(g), **Allegation B: Abuse of Authority: Vehicle Stop:** § 87(2)(g)). Police Officer Jones determined that while § 87(2)(b) was driving, the car was registered to § 87(2)(b). Police Officer Jones obtained § 87(2)(b)'s license and § 87(2)(b) registration, but did not use them to check whether the car was stolen, perform database searches, or issue a summons. Instead, Police Officer Jones asked § 87(2)(b) if he had any weapons (**Allegation C: Abuse of Authority: Question:** § 87(2)(g)), had him step out of the car, and frisked him (**Allegation D: Abuse of Authority: Frisk:** § 87(2)(g)). § 87(2)(b) recorded this frisk with his cellphone, and Police Officer Jones ordered him not to (**Allegation E: Abuse of Authority: Interference with recording:** § 87(2)(g)).

Sergeant David Welton, Police Officer Kelvin Guillen, and Police Officer Emmanuel Deleon of the 47th Precinct arrived as backup. Sergeant Welton, Police Officer Jones, and Police Officer Santomero threatened to arrest § 87(2)(b) if he did not step out of the car (**Allegation F: Abuse of Authority: Threat of arrest:** § 87(2)(g), **Allegation G: Abuse of Authority: Threat of arrest:** § 87(2)(g), **Allegation H: Abuse of Authority: Threat of arrest:** § 87(2)(g)). The officers took § 87(2)(b) out of the car and arrested him, then arrested § 87(2)(b).

Sergeant Welton then approached § 87(2)(b) and ordered him to exit the car. § 87(2)(b) refused, Sergeant Welton tried to grab his arm, and § 87(2)(b) pulled away. Sergeant Welton then pointed his Taser at § 87(2)(b) (**Allegation I: Abuse of Authority: Threat of Force:** § 87(2)(g)), and, when he exited the car, arrested him. Police Officer Santomero then searched the civilians' car (**Allegation J: Abuse of Authority: Vehicle search:** § 87(2)(g)). Sergeant Welton then seized the vehicle and authorized its removal to the stationhouse where Police Officer Jones searched it. (**Allegation K: Abuse of Authority: Seizure of Vehicle:** § 87(2)(g), **Allegation L: Abuse of Authority: Vehicle search:** § 87(2)(g)).

§ 87(2)(b) (Board Review 01 and 02), § 87(2)(b) (Board Review 03), and § 87(2)(b) (Board Review 04) all recorded portions of this incident with their cellphones.

The investigation obtained BWC video from Police Officer Santomero (**Board Review 05**), Police Officer Jones (**Board Review 06**), Sergeant Welton (**Board Review 07**), Police Officer Guillen (**Board Review 08**), and Police Officer Deleon (**Board Review 09**), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Ryan Jones stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – Abuse of Authority: Police Officer Nicholas Santomero stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) provided a sworn statement at the CCRB on June 3, 2019 (**Board Review 10**). § 87(2)(b) provided a sworn statement at the CCRB on August 21, 2019 (**Board Review 11**). Police Officer Jones was interviewed on January 16, 2020 (**Board Review 12**). Police Officer Santomero was interviewed on January 22, 2020 (**Board Review 13**).

Police Officer Jones and Police Officer Santomero provided consistent accounts of this incident's origin. The officers were on routine anti-crime patrol when they observed the civilians' car apparently speeding. The officers had no additional information about the car or its occupants and jointly decided to stop the car based solely on their naked-eye observation of its speed.

In their sworn statements, § 87(2)(b) and § 87(2)(b) denied that their vehicle sped past the officers or committed any other vehicle traffic law (VTL) infractions. Both men stated that § 87(2)(b) stopped at multiple stop signs as he drove down Paulding Avenue, making it impossible for him to reach an illegal speed.

An automobile traveling on a public highway may be stopped for a routine traffic check when a police officer reasonably suspects a violation of the N.Y. Vehicle & Traffic Law. (*People v. Mestey*, 402 N.Y.S.2d 577 (1978)) (**Board Review 14**)

§ 87(2)(g)

Allegation C – Abuse of Authority: Police Officer Ryan Jones questioned § 87(2)(b).

Allegation D – Abuse of Authority: Police Officer Ryan Jones frisked § 87(2)(b).

Allegation E – Abuse of Authority: Police Officer Ryan Jones interfered with § 87(2)(b)'s use of a recording device.

Police Officer Santomero's BWC video (**Board Review 05**) starts with him getting out of his police vehicle and approaching the civilians' car. As he walks from his vehicle to the civilians' front passenger window, the civilians' car interior is not visible, despite Police Officer Santomero apparently shining a flashlight at the vehicle windows (0:20 to 0:30). In his interview, Police Officer Santomero stated that as he approached the car, he used his flashlight and could see § 87(2)(b) and § 87(2)(b) (the left rear and right rear passengers, respectively) but not § 87(2)(b) or § 87(2)(b) (the driver and front passenger,

respectively). § 87(2)(b) and § 87(2)(b) were moving around, and § 87(2)(b) apparently reached into either a backpack or a clothing pocket. Police Officer Santomero did not see § 87(2)(b) hide anything, only that his hand went in and out of a bag or pocket. Police Officer Santomero could not describe § 87(2)(b) movements any further and did not describe any other safety issues.

According to the videos' embedded timestamps, Police Officer Jones' BWC video (**Board Review 06**) starts approximately four minutes later than Police Officer Santomero's, and does not show him approaching the civilians' car. In his interview, Police Officer Jones stated that as he approached the civilians' car, he saw that all four occupants were moving their heads and arms a lot. He did not see any of the occupants apparently try to hide anything and did not recall whether they appeared to pass anything amongst themselves. Police Officer Jones could not further describe the occupants' movements and did not describe any other safety issues.

As most clearly shown in § 87(2)(b)'s first cellphone video, § 87(2)(b) was describing his route and driving decisions when Police Officer Jones asked if he possessed a weapon (0:38 of **Board Review 01**). § 87(2)(b) denied having a weapon, and Police Officer Jones had him step out of the car and frisked him.

In his interview, Police Officer Jones stated that while he was outside § 87(2)(b)'s door, he did not see anything in the vehicle that was or could have been illegal. He did not see anything indicative of the presence of a weapon and none of the occupants seemed to pose a specific threat. None of the civilians lunged or grabbed for anything. He confirmed that he asked § 87(2)(b) to step out of the vehicle because he wanted to make sure he did not have any weapons. There was nothing that led him to believe § 87(2)(b) was armed, and § 87(2)(b) was the most cooperative of the four civilians throughout the incident. Police Officer Jones found no weapons during the frisk.

In his interview, Police Officer Santomero stated that while he was outside § 87(2)(b)'s door, he did not see anything in the vehicle indicative of the presence of a weapon. § 87(2)(b)'s cellphone video starts with Police Officer Jones frisking § 87(2)(b) and repeatedly ordering § 87(2)(b) not to record (0:00 to 0:15 of **Board Review 03**). § 87(2)(b) responded by placing both hands outside the vehicle window, stating that he was allowed to record, and continuing to record. Police Officer Jones took no further actions to prevent § 87(2)(b) from recording. In his interview, Police Officer Jones did not recall if any of the civilians ever recorded the officers or held their phones in their hands, or if he ever told a civilian to stop recording.

A quick hand motion by an occupant of a vehicle, absent other circumstances suggesting criminal activity, is not suspicious in itself. (*People v. Mestey*, 402 N.Y.S.2d 577, 1978) (**Board Review 14**) A driver looking over their shoulder combined with a passenger repeatedly ducking down in their seat is innocuous. (*People v. Rossetti*, 539 N.Y.S.2d 4, 1989) (**Board Review 15**) A police officer who asks a private citizen if he or she is in possession of a weapon must have founded suspicion that criminality is afoot. (*People v. Garcia*, 20 N.Y.3d 317 (2012)) (**Board Review 16**) A frisk is permissible only if the police possess a particularized reasonable suspicion that the suspect is armed and may be dangerous. (*People v. Russ*, 61 N.Y.2d 693 (1984)) (**Board Review 17**)

Under NYPD Patrol Guide Procedure 203-29, civilians have a right to lawfully observe and/or record police activities, including detentions, searches, and arrests, that happen on public streets and sidewalks. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or

when a violation of law is committed by the individual(s) who are videotaping. Otherwise, officers may not threaten, intimidate, or otherwise discourage an observer from recording an officer's activities (**Board Review 18**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Abuse of Authority: Sergeant David Welton threatened to arrest § 87(2)(b)

Allegation G – Abuse of Authority: Police Officer Nicholas Santomero threatened to arrest § 87(2)(b)

Allegation H – Abuse of Authority: Police Officer Ryan Jones threatened to arrest § 87(2)(b)

Sergeant Welton was interviewed on February 12, 2020 (**Board Review 19**).

Police Officer Santomero's BWC video shows that when he reached the civilians' front passenger window, he immediately used his radio to request that another anti-crime unit respond to this incident (0:35 to 1:00 of **Board Review 05**). It is undisputed that, between Police Officer Santomero calling for backup and that backup arriving, he and Police Officer Jones repeatedly told § 87(2)(b) and § 87(2)(b) to get out of their car so that the officers could check them and their vehicle for weapons.

It is undisputed (and recorded on all three officers' BWC videos) that Sergeant Welton, Police Officer Santomero, and Police Officer Jones repeatedly told § 87(2)(b) that if he did not step out of the car and allow the officers to search it then they would arrest him for obstructing governmental administration (OGA).

In their interviews, both Police Officer Jones and Sergeant Welton stated that § 87(2)(b) was guilty of OGA because his refusal to exit the car physically prevented the officers from searching him and the vehicle for contraband. Police Officer Santomero did not explain how § 87(2)(b) committed OGA.

Under New York Penal Law 195.05, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference (**Board Review 20**). When a defendant became belligerent and uncooperative and refused several requests to remain standing or seated in one place, while an officer was awaiting information from the dispatcher regarding his license and registration, this behavior gave the officer probable cause to arrest the defendant for obstructing governmental administration. (*People v. Graham*, 54 A.D.3d 1056; **Board Review 33**) Officers may direct a driver to exit his vehicle out of a concern for their safety even though they may lack a specific reason for believing that the driver is in possession of a weapon. This reasoning applies with equal force to passengers in the detained vehicle. (*People v. Henson*, 21 A.D.3d 172 (2005)) (**Board Review 21**)

§ 87(2)(g)

Allegation I – Abuse of Authority: Sergeant David Welton threatened § 87(2)(b) with the use of force.

The next portion of the incident was recorded by Police Officer Guillen’s BWC as he stood with § 87(2)(b) at the car’s trunk (10:25 to 11:06 of **Board Review 08**). The video shows Police Officer Deleon and Sergeant Welton standing outside § 87(2)(b) door for a few seconds. Sergeant Welton told § 87(2)(b) to step out, but he did not. Sergeant Welton then opened the car door, reached inside, and repeatedly told § 87(2)(b) to step out. He then reached inside again and pulled back more forcefully, but § 87(2)(b) remained inside the car. Sergeant Welton then drew and pointed his Taser at § 87(2)(b) while ordering him to step out, and § 87(2)(b) complied. Police Officer Deleon handcuffed him outside the vehicle.

§ 87(2)(b) actions during this portion of the incident were most clearly recorded by Sergeant Welton’s BWC (10:45 to 11:10 of **Board Review 07**). The first time that Sergeant Welton reached into the car, § 87(2)(b) quickly rotated his arm at the shoulder, pulling it away from Sergeant Welton. § 87(2)(b) put his hand back in his lap, then began gesturing with it while apparently speaking (the NYPD redacted the associated audio based on its connection to a sealed arrest). After a few seconds, Sergeant Welton grabbed his wrist again, and succeeded in pulling his hand and forearm away from his body for approximately one second. § 87(2)(b) then pulled his arm back towards himself, freeing it from Sergeant Welton’s grip. Sergeant Welton then drew and pointed his Taser. In his interview, Sergeant Welton stated that he displayed his Taser in order to avoid having to physically fight § 87(2)(b) inside the car. He stated that there were no further tactical issues that led him to display his Taser.

Under NYPD Patrol Guide Procedure 221-01, an officer may use force when it is reasonable to place a person in custody or to prevent escape from custody (**Board Review 22**). Under NYPD Patrol Guide Procedure 221-08, an officer may deploy a Taser against a civilian who is actively resisting arrest through physically evasive movements (**Board Review 23**).

§ 87(2)(g)

Allegation J – Abuse of Authority: Police Officer Nicholas Santomero searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

As most clearly recorded by his own BWC, Police Officer Santomero searched the civilians' car after they were all outside it (19:50 of **Board Review 05**). He entered the rear seat area, took § 87(2)(b) phone out of its case, and looked through various ID or credit cards that were stored between the phone and the case. He also picked up a backpack, patted down its exterior, and scanned the rear passenger floor with a flashlight. He also used the flashlight to illuminate the driver and front passenger seating areas. According to his BWC video, Police Officer Santomero began searching the car prior to any other officer asking or ordering him to do so.

The police must not only have probable cause to search a vehicle for contraband, but there must also be a nexus between a civilian's arrest and that probable cause to search. (*People v. Galak*, 81 N.Y.2d 463 (1993)) (**Board Review 24**).

§ 87(2)(g)

Allegation K – Abuse of Authority: Sergeant David Welton seized § 87(2)(b)'s property.

Allegation L – Abuse of Authority: Police Officer Ryan Jones searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

In Police Officer Santomero's BWC video, he asked Police Officer Jones if the officers should seize the car, but Police Officer Jones did not answer. Sergeant Welton then approached Police Officer Santomero and said, "I'm smelling weed, is there anything in the car? Let's look through the car before we release him." Police Officer Santomero replied, "I thought we were going to take the car back to the command, release him here." Sergeant Welton said, "Oh because it's not his car" and Police Officer Santomero confirmed this.

Sergeant Welton and Police Officer Santomero then approached § 87(2)(b) and Sergeant Welton said, "Right now, we're gonna bring the car back to the Precinct. If you want to come to the Precinct, we might be able to release it to you a little bit later. But right now, we're gonna take it back" (23:42 of **Board Review 05**).

In his interview, Sergeant Welton said that the officers seized, transported, and invoiced the car because § 87(2)(b) the driver, was not the registered owner. Sergeant Welton acknowledged that § 87(2)(b) had permission from the registered owner, § 87(2)(b) to drive the car, and said there were no other factors behind the decision to seize it. He did not recall whether he searched the car at the stationhouse or saw other officers do so.

In his interview, Police Officer Jones said that an officer or officers searched the civilians' car at the stationhouse, but he did not remember who did this or whether he was involved. The officer(s) searched the car to make sure there were no weapons inside and did not prepare an inventory of the vehicle's contents.

In his interview, Police Officer Santomero said that he observed Police Officer Jones conduct a stationhouse inventory search of the car but did not participate in that search himself. By procedure, Police Officer Jones, as the arresting officer, would have recorded the vehicle's inventory on vouchers.

The property vouchers obtained by the investigation do not mention § 87(2)(b) car (**Board Review 20**). While there is a voucher for the associated car key, there is no voucher for the car or any inventory of its contents. Police Officer Jones' memo book mentions that he prepared unspecified vouchers regarding this incident, but does not mention the car or its contents (**Board Review 23**).

An officer must have probable cause to search a vehicle for evidence. An inventory search is justified by the fact that a detailed and carefully recorded inventory protects seized property while it is in police hands and insures against claims of loss, theft, or vandalism. (People v. Galak, 80 N.Y.2d 715 (1993)) (Board Review 24). According to NYPD Patrol Guide Procedure 218-13, when conducting an inventory search of a seized vehicle, an officer must search the interior of the vehicle thoroughly, remove all valuables, and invoice them on separate property invoices. Property of little value that is left inside the vehicle (e.g., old clothes, cassette tapes, and vehicle parts, etc.) should, within reason, be listed in the uniformed member's memo book and cross referenced to the invoice number covering any valuables removed (Board Review 25).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED]
 - [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been party (**Board Review 28**).
- Police Officer Jones has been a member of service for five years and has been a subject of four other CCRB complaints and seven other allegations, one of which was substantiated.
§ 87(2)(g) [REDACTED]
[REDACTED]
 - CCRB complaint number 201808628 involved a substantiated allegation of discourtesy (word) against Police Officer Jones. The CCRB recommended Formalized Training and the NYPD has not yet reached a disposition or disciplinary recommendation.
- Police Officer Santomero has been a member of service for six years and has been a subject in three other CCRB complaints and eight other allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
[REDACTED]
- Sergeant Welton has been a member of service for 11 years and has been a subject of two other CCRB complaints and five other allegations, none of which was substantiated.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the Office of the New York City Comptroller regarding this incident and the associated one from March 10, 2019. Regarding this specific incident, § 87(2)(b) alleged that officers unlawfully seized and searched both him and his car, and arrested, assaulted, and battered him. Regarding both incidents, § 87(2)(b) claimed a total of \$200,000 in damages (**Board Review 29**). § 87(2)(b) also filed a Notice of Claim with the Office of the New York City Comptroller regarding this incident, alleging emotional distress, physical pain and injury, shock and trauma, loss of liberty, violation of civil rights, and loss of dignity and reputation. § 87(2)(b) claimed a total of \$1,000,000 in damages (**Board Review 30**).
- § 87(2)(b)
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of criminal convictions in New York City (**Board Review 32**).
- The investigation did not interview § 87(2)(b) or § 87(2)(b) or otherwise obtain their dates of birth, and cannot request OCA records for them.

Squad No.: 7

Squad Leader: _____ Vanessa Rosen June 11, 2020

Signature Print Title & Name Date

Reviewer: _____

Signature Print Title & Name Date